

1 traveling, you know, at the speed limit  
2 or, you know, about as fast as the rest  
3 of the traffic coming through there."

4 Ladies and gentlemen, that's  
5 exactly what he said. And throughout my  
6 remarks of this case -- my remarks are  
7 important, and I want to be careful not  
8 to mischaracterize the evidence, but to  
9 give you a helpful analysis. That's  
10 actually my job at this point to comment  
11 on the law and the evidence in a helpful  
12 way.

13 The prosecutorial mechanism in this  
14 case has tried to belittle Mr. Hall's  
15 injury. In regard to that injury, I ask  
16 that you please recall what Officer  
17 Huffman said today, that it's procedure  
18 to handcuff people's hands behind their  
19 back. He believes after daylight they  
20 rode back up to Windsor. Mr. Hall's  
21 hands were handcuffed behind his back.

22 You saw for one, for one, Number 1,  
23 you saw Mr. Hall, stand up here, take his  
24 arm and move this bone around. That's  
25 not connected to his elbow. They say

1       seeing is believing, but that fact,  
2       ladies and gentlemen, is documented by  
3       the Justice Center infirmary medical  
4       records, and you'll have those with you  
5       to factor in your deliberations. You'll  
6       have the University of Cincinnati  
7       hospital records. And if you'll go  
8       through there, past the doctor's notes,  
9       which are in longhand -- and no doctor  
10      can write so we can read it, but if you  
11      go to the first typewritten page in that  
12      report from General Hospital and in the  
13      second type written page, and if you will  
14      take the time to read that second  
15      typewritten page, it will tell you that  
16      the bone was fractured and severed. It  
17      will tell you which digits of his finger  
18      had nerve damage and numbness, just as  
19      Mr. Hall described to you on the witness  
20      stand.

21               Now, if you take -- this evidence  
22      is his showing you in court the medical  
23      records. If you take that evidence that  
24      he has an arm injury and that sort of  
25      weighs out and has implications. Mr.

1 Hall sat on this witness stand and told  
2 you, yes, he could drive the car, that he  
3 went to get the car, and he can drive the  
4 car by putting his knee up against the  
5 steering wheel as he shifts, essentially  
6 driving with one hand. That's what he  
7 said.

8 Now, let's compare that with  
9 driving with this arm in this condition  
10 through an 80-mile-an-hour chase through  
11 twisty winding streets over around Eden  
12 Park with a standard-shift automobile,  
13 with the arm in the condition as it's  
14 described on the second typewritten page  
15 in the University of Cincinnati report.

16 Ladies and gentlemen, that is going  
17 to cause you doubt. An 80 mile-an-hour  
18 chase, winding streets, in a standard  
19 shift automobile, compared to that  
20 medical report.

21 The other half of this coming out  
22 of the implications of this arm injury,  
23 Fred Hall was handcuffed on the scene,  
24 and he was taken into custody at 3:43  
25 a.m. on October 17th.

1                   And the radio tapes, et cetera,  
2                   will show you conclusively, beyond any  
3                   doubt, exactly what time that he left.  
4                   5:11 a.m.    Advised tow truck just left,  
5                   en route with individual handcuffed."  
6                   From 3:43 to 5:11 a.m., an hour and 25  
7                   minutes that Fredrick Hall was sitting in  
8                   a police car with his hands handcuffed  
9                   behind him with the injury that's  
10                  described to you through the University  
11                  of Cincinnati medical reports. That  
12                  injury, by the way, occurred -- again  
13                  related by the medical records -- on the  
14                  third of October, 17, 16, 15, 14 -- 16,  
15                  15, 14, exactly 14 days prior to this  
16                  incident.

17                 If you have a bone shot into in  
18                 your arm and substantial nerve damage, if  
19                 you can imagine sitting in this police  
20                 car handcuffed, sitting on your hands,  
21                 ladies and gentlemen, for an hour and 25  
22                 minutes -- what if that happened to you?  
23                 Is that going to raise your blood  
24                 pressure? Are you going to tell  
25                 somebody, Hell, I went out and got

1 shaving cream? Can you understand  
2 disgust? Can you understand  
3 intimidation? Can you understand a  
4 citizen's feeling of being mistreated.

5 Now, the police, as you know -- I  
6 know you know -- the police tried to  
7 characterize this, "I went out to get  
8 some shaving cream," as an inculpatory  
9 admission of guilt. And I just ask you  
10 to wait here. Is this an inculpatory  
11 admission of guilt, or was Mr. Hall in  
12 pain? Was he under duress?

13 And, ladies and gentlemen, back in  
14 the jury room, you just read that second  
15 page of the typewritten material, and you  
16 see that report and you think about him  
17 sitting on his hands and arms for an hour  
18 and 25 minutes.

19 The police talked about Mr. Hall  
20 making statements, and ladies and  
21 gentlemen, the Judge is going to give you  
22 a instruction. His Honor, the Judge --  
23 let me clarify that. Manners for a  
24 lawyer, when I'm talking to you, I can  
25 say "the Judge." If I'm talking to him,

1           it's "his Honor." I have done that  
2           without exception. I have great respect  
3           for the Court. I can say "the Judge"  
4           directly but not to him.

5                   His Honor will give you an  
6           instruction that we don't contest. We  
7           don't contest the legal notion that a  
8           person can voluntarily make an admission,  
9           but refuse to waive their rights. We  
10          submit that's technically possible.

11                   But what are the implications or  
12          ramifications of this? Our contention is  
13          that he made no inculpatory admissions of  
14          guilt at all in this case. The best one  
15          that we have heard is that he was out  
16          buying shaving cream.

17                   And do with that whatever you're  
18          going to do with the shaving cream.  
19          Ladies and gentlemen, that's a statement  
20          that comes out of pain and frustration  
21          that has nothing to do with this case at  
22          all. It's irrelevant, immaterial, and it  
23          has nothing to do with this case. It's a  
24          common frustration.

25                   On the topic of statements, there

1 is simply no written statement in this  
2 case. I submit to you that if I were a  
3 police officer, not only would I identify  
4 the evidence so you know where it came  
5 from, but if a person was willing to make  
6 a statement, I would make every effort to  
7 get that statement in writing. There is  
8 not a statement here that we can analyze  
9 and review and deal with confidence.  
10 There is a cloud over this statement  
11 business.

12 why would a person refuse to sign a  
13 waiver? why would a person who is  
14 voluntarily going to talk to the police,  
15 why would he not sign a waiver?  
16 Although, technically, as I said, you can  
17 refuse to sign the waiver, but go ahead  
18 and voluntarily make admissions and talk  
19 to the police, that's technically  
20 possible.

21 In your common sense experience,  
22 which you're going to apply in this case,  
23 why would a person refuse to sign a  
24 waiver if it was their intent to talk to  
25 the police, to deal with the police and

1 to make statements.

2 I don't know how to pronounce this.  
3 Officer Eatrides, the officer who was  
4 with the lady officer, arrived at Fulton  
5 Street at 3:38 a.m.

6 Ladies and gentlemen, a brief  
7 summary of this evidence, trying to shed  
8 some light on this situation, the police  
9 came to the door. Mrs. Hall told them  
10 that Dexter wasn't there, but she gave  
11 him a description of Dexter, and that  
12 came out on the radio stuff, computer  
13 printout, radio log, recording, et  
14 cetera. And she told them that this was  
15 her car, no question about that.

16 The police came back about a half  
17 hour later, and she admitted to them that  
18 Dexter was there, and he was arrested and  
19 taken down to the Juvenile Detention  
20 Center.

21 After the police arrived there, at  
22 3:38, had this brief conversation, the  
23 car was found at Windsor at 3:43. From  
24 the tape, you can figure out -- and there  
25 is just overlap of 10 seconds, 3:18 and



1           10 seconds, 3:18 and 20 seconds,  
2           whatever, it makes it difficult to listen  
3           to the tape. But you can discern for  
4           yourself that there was as little as  
5           three minutes, depending how the seconds  
6           fall on each end, there was as little as  
7           three minute between the time that the  
8           police arrived at Fulton and the time  
9           that the car was found on windsor.

10           If you listen to the tape and  
11           verify that, it's between five minutes  
12           and three minutes, depending upon how the  
13           seconds fall. It's obvious, ladies and  
14           gentlemen, that when the police arrived  
15           at Fulton, that Dexter was at home, and  
16           Mr. Hall was at the car or almost to the  
17           car or whatever in the area of windsor  
18           when the police arrived at Fulton.

19           It's not real complicated if you  
20           listen to the tape. Figure out the  
21           times. Three minutes difference between  
22           the police arriving at Fulton, getting a  
23           description of the car and the finding of  
24           the car on windsor.

25           It is apparent that Mr. Hall was

1 approaching that car in the vicinity of  
2 that car and that Dexter was at home. It  
3 seems to me the police, the prosecution  
4 have a right to make something out of  
5 that. I think it's apparent he was at  
6 home.

7 officer Huffman submitted a latent  
8 fingerprint, a fingerprint that was taken  
9 from the car to the lab, and he also  
10 submitted with it a fingerprint from  
11 Fredrick Hall. The fingerprints didn't  
12 match.

13 Now, ladies and gentlemen, it's my  
14 job here to shed some light here on the  
15 situation. And I'm just going to -- and  
16 I'm going to tell you that if you think  
17 about your automobile, how many people  
18 touch that automobile, and how many  
19 fingerprints are probably on that  
20 automobile, that the chance of one  
21 fingerprint matching any particular  
22 person is not great.

23 As a matter of fact, it's very  
24 remote, so Officer Huffman submitted this  
25 fingerprint. We don't know where it came

1 from on the car. We submitted it, and it  
2 didn't match. Now, I'm not going to  
3 insult you and tell you that is a  
4 substantially important piece of  
5 evidence, because there are fingerprints  
6 all over the car. There are fingerprints  
7 on the tires from the last person who  
8 fixed a flat. You see what I mean? But  
9 it wasn't Fredrick Hall's fingerprint.

10 Three cartridge cases were  
11 submitted to the fingerprint specialist  
12 for analysis. Ladies and gentlemen,  
13 Officer Huffman sat here and told you  
14 that it's police procedure fundamentally  
15 to mark evidence where you get it.

16 Yet these cases were submitted to  
17 the lab for analysis for fingerprints,  
18 and there was another report, which is a  
19 prosecution exhibit, for the firing pin  
20 marks. We paid for better police work  
21 than we got as to this particular  
22 evidence. We should know where those  
23 cases came from. Two of them came from  
24 the same gun; one of them didn't.

25 I just ask you rhetorically, was

1 one in the car from, if you recall, being  
2 robbed 14 days earlier? I don't have a  
3 clue. We need to know that. It's not  
4 Fredrick Hall's fault that that evidence  
5 is not here before you. You may think  
6 there is an undercurrent here, an  
7 undercurrent that maybe there is a  
8 self-fulfilling prophecy. The police  
9 think that they know something, and then  
10 they make it true.

11 They didn't try to disprove their  
12 own case. I think everybody on this jury  
13 panel is familiar with gunshot residue  
14 tests on people's hands. The police  
15 think they know, so they are not going to  
16 do a gunshot residue test. They are not  
17 going to destroy what they think is their  
18 case.

19 Officer Huffman said there is a  
20 two-hour limit on that because a person  
21 might wipe their hands off in the grass  
22 or wash their hands.

23 Let me tell you, if a person washed  
24 their hands, washed it all off, then the  
25 test results are meaningless. But what

1 if they don't wash off their hands, and  
2 the test is given three, four, five, six  
3 hours later. That's evidence that you  
4 could use. That's conclusive evidence.  
5 And in this class of case and the  
6 magnitude of the case, we need that  
7 evidence.

8 An officer comes up and says, in 20  
9 years, he has never done this test. He  
10 has no training in this test. The  
11 exhibits weren't marked. The shell  
12 casings we don't know where they came  
13 from. He has never had any training in  
14 gunshot residue tests, never used it in  
15 20 years.

16 I think that fact pattern -- that's  
17 what I mean by undercurrent. I think it  
18 fits a pattern in this case.

19 They say that Officer Huffman went  
20 to Windsor to look for the gun with Fred  
21 Hall. They said Fred Hall went  
22 voluntarily. Let me tell you, ladies and  
23 gentlemen, Fred Hall was under arrest.  
24 He didn't go anywhere voluntarily. He  
25 was under arrest. When they wanted to

1 take him to the Justice Center, they took  
2 him to the Justice Center.

3 when they wanted to take him to  
4 windsor -- had they not wanted to take  
5 him to windsor Avenue, they wouldn't have  
6 taken him to windsor Avenue.

7 what is the logic of telling the  
8 police, Okay, I'll show you where the gun  
9 is. I won't put that in writing. I'm  
10 not going to put that in writing. I'm  
11 not going to sign any waiver form. I'll  
12 cooperate with you. I will show you  
13 where the gun is and go up there and not  
14 find the gun. The only thing that you  
15 have done is incur the wrath of the  
16 policeman. You have not done anything to  
17 your benefit. What is the logic?

18 The logic in that is officer  
19 Huffman got him in the car, took him up  
20 there, they looked for the gun, they  
21 thought he might get lucky and find it.  
22 The fact is he didn't find it.

23 Ladies and gentlemen, I have said  
24 twice already -- I'll say it again --  
25 this is a profoundly serious case. When

1           you read the indictment in this case or  
2           the instructions as it relates to the  
3           indictment, it will be become chillingly  
4           clear how important this case is. This  
5           tape is aggravating to listen to, but you  
6           will have that tape back in the jury room  
7           with you with a recorder. If you can't  
8           get the recorder to work or have problems  
9           with it, the Judge will give you  
10          instructions about how to communicate  
11          that to us.

12                 The license number in this case,  
13          ADU 6730, came out at 3:21 on the tape  
14          thanks to the good effort of Officer  
15          Fromhold. There is an indication of a  
16          person with a white T-shirt in the car,  
17          involved -- in the car. I'm not going to  
18          characterize this -- I'm telling you this  
19          is on the tape and begging your diligence  
20          to listen to it, but a white T-shirt at  
21          3:23.

22                 The three occupants, two in front,  
23          one in back, male black, dark hat, at  
24          3:28. Suspect Dexter Hart, male black,  
25          at 3:40, passenger, 19 to 20, medium

1           complexion, black ball cap, black jacket  
2           clean-shaven.

3                   3:52, "Passenger is shooter, male  
4           black, 19 to 20, black baseball cap,  
5           medium complexion, clean-shaven, thin  
6           build, and black jacket.

7                   This case is such of a magnitude,  
8           I ask you to listen to that tape to  
9           verify what is on it. And it's got a  
10          rewind button, if you will be a good  
11          enough citizen, good enough people to  
12          verify what is on that tape, to listen to  
13          it yourself in the original voices, in  
14          the original voices, real time, see what  
15          is there.

16                  Officer Fromhold was apparently the  
17          first officer on the scene. He was on  
18          bicycle patrol. And I was sincere when I  
19          indicated to him it's excellent police  
20          work having this license number out very  
21          quickly. But let's address the issue of  
22          the number of people in the car. I think  
23          we are getting closer to the fundamentals  
24          of this case.

25                  Kevin Davis said, one, Johann Hart



1           said that the crackhead got into the car  
2           briefly and got back out.

3                   Now, from Officer Fromhold's  
4           testimony -- do you remember Jimmie  
5           Martin, who kept repeating the license  
6           number, from Officer Fromhold, "a  
7           cognizant desire to remember that." And  
8           the license number was, in fact, correct.  
9           Jimmie Martin saw this incident. Jimmie  
10          Martin was a good enough citizen --  
11          whatever, he was, I don't know, but he  
12          was concerned enough to repeat that  
13          license number over and over to try to  
14          help the police.

15                   Is he going to mislead the police  
16          in some other way? Some of the  
17          information that Fromhold testified to  
18          that he got from Jimmie Martin, male  
19          black, dark cap, 20 to 21, three people  
20          in the car.

21                   officer Fromhold said in his  
22          testimony, "I don't recall where the rear  
23          person was seated, but I do recall them  
24          explaining to me that it was one of the  
25          two people in front, one in the back. I

1 don't recall where the person in the back  
2 was seated, what side of the vehicle."

3 Now, this is information that  
4 Jimmie Martin gave Officer Fromhold, and  
5 Officer Fromhold relays that to us in  
6 court in person. "I don't recall where  
7 the person in the rear was, but I do  
8 recall them explaining to me that it was  
9 one of the two people in the front, one  
10 in the back, and I don't recall where the  
11 person in the back was seated, which side  
12 of the vehicle."

13 Another comment attributed to  
14 Jimmie Martin, he told me -- from Officer  
15 Fromhold, "He told me there were three,  
16 and one jumped out of the car."

17 Now, I want you to compare Officer  
18 Fromhold's implication from Jimmie Martin  
19 with Officer Fromhold's analysis of what  
20 Lolita said.

21 This is what Lolita Moore told  
22 Officer Fromhold, and it's a direct  
23 quote. "She was on 13th, I believe west  
24 of the crime scene and saw the vehicle  
25 proceed past her, started to make a turn,

1 multiple gun shots rang out." She said  
2 somebody exited the vehicle, went over to  
3 the fallen victim, the other subject, Mr.  
4 Davis, had run.

5 Let me back up a minute. She said  
6 somebody had exited the vehicle, went  
7 over to the fallen victim -- and the  
8 other victim, Mr. Davis, had already run  
9 away -- and goes into his pockets and  
10 runs back to the vehicle, back to the  
11 car, and takes off.

12 Lolita Moore is telling Officer  
13 Fromhold that she saw somebody, one of  
14 the three, jump out of the car, go over  
15 and rifle through Johann's pockets,  
16 because Davis had already run out of the  
17 area.

18 Compare that with Jimmie Martin's  
19 statement to Officer Fromhold that he  
20 told me there were three and one jumped  
21 out of the car.

22 There has got to be some  
23 credibility from these people on the  
24 scene that are talking to the police and  
25 trying to assist them. I think this is a

1           very important revelation, and again,  
2           it's from Jimmie Martin to Officer  
3           Fromhold on the scene, verbatim.

4                   He heard the first gunshot, then  
5           turned to see the vehicle drive by,  
6           somebody hanging out the window shooting,  
7           and that's when he saw the rear of the  
8           vehicle proceed southbound and made a  
9           mental note of the license plate.

10                   Ladies and gentlemen, there is no  
11           other evidence in this case of that  
12           quality and reliability. He heard the  
13           first gunshot, then turned to see the  
14           vehicle drive by, somebody hanging out  
15           the window shooting, and that's when he  
16           saw the rear of the vehicle proceed  
17           southbound and made a mental note of the  
18           license plate. That statement rings more  
19           true than anything in this case.

20                   You cannot believe that he got this  
21           license number correct and believe the  
22           identification and rendition of Johann  
23           Hart and Kevin Davis. You cannot do  
24           both.

25                   Kevin Davis started out by saying

1           that he watched the car from across the  
2           street for a half an hour. And there is  
3           some more questioning from the  
4           prosecutor, he said 15 minutes. They  
5           settled on 15 minute.

6           Johann said he talked to him for  
7           four minutes, five minutes. You noticed,  
8           too, that Kevin Davis says he never saw  
9           his hands. Johann says, yes, he all of  
10          sudden started waving his arms, waving  
11          his hands.

12          Relate that to the injury of Mr.  
13          Hall's arm, but more importantly relate  
14          this to the statement from Jimmie Martin,  
15          the statement that resulted in the  
16          license plate being broadcast, that it is  
17          a drive-by shooting. That describes a  
18          drive-by shooting. Both the statement of  
19          Lolita Moore and Jimmie Martin say  
20          somebody was hanging out the window  
21          shooting. That is a drive-by shooting.

22          Again, Lolita Moore saw the vehicle  
23          proceed past there, start to make the  
24          turn, multiple gunshots rang out. Ladies  
25          and gentlemen, that is a drive-by

1 shooting. It is totally diametrically  
2 opposed to the statements of Johann Hart  
3 in the affidavits.

4 Let me talk about something  
5 ancillary here for a minute. These  
6 cartridge cases that were mishandled,  
7 officer Fromhold found those. They were  
8 35 feet apart. 35 feet apart. How could  
9 they get to be 35 feet apart, other than  
10 evidence to corroborate the story told to  
11 you by Lolita Moore that this car was  
12 traveling and somebody was hanging out  
13 the window shooting.

14 Now, somebody will probably put  
15 this the spin on this case that this was  
16 just another casing laying around, just  
17 another cartridge case laying around, but  
18 somewhere, Officer Fromhold -- that's  
19 what I'm looking for, and I can't find it  
20 -- says that's rare to find cartridge  
21 cases on the street.

22 what is the probability or  
23 possibility of finding the cartridge  
24 cases of the same rank, same caliber,  
25 .380, within 35 feet on the same day at

1 the same time?

2 I found that. I can quote to you  
3 directly from Officer Fromhold, "That's  
4 unusual to find shell casings in that  
5 area."

6 Question: That shell casing was  
7 also recovered from the scene, correct?"  
8 "Yes."

9 Ladies and gentlemen, the scene is  
10 the heart of this case. You cannot  
11 believe the testimony of Johann Hart and  
12 Kevin Davis and believe this testimony  
13 from the two witnesses on the stand --

14 MR. ANDERSON: Objection, your  
15 Honor.

16 THE COURT: Sustained.

17 MR. RADER: And if you have a  
18 problem with the identification of Johann  
19 Hart and Kevin Davis, if you have problem  
20 with that scene, their identification in  
21 the photo lineup is part and parcel of  
22 that. It's inextricably based on what  
23 they claim they saw sitting still in the  
24 car carrying on this conversation. They  
25 claim that is the basis of the

1 identification. They claim that's where  
2 they saw Fred Hall.

3 If that opportunity did not happen,  
4 if it did not happen as they say it  
5 happened, if it happened as the other  
6 people say it happened, and the photo  
7 identification is part and parcel of this  
8 misrepresentation to us about what  
9 happened, was this a drive-by shooting?  
10 Was this a five-minute or a 30-minute  
11 deal?

12 And when you answer that question,  
13 things start to fall into place. Shell  
14 casings 35 feet apart. There is the  
15 license number being broadcast. His  
16 Honor, the Judge, will give you these  
17 written jury instructions to take with  
18 you. I said in opening statement, these  
19 words are chosen with profound care over  
20 hundreds of years.

21 His Honor will tell you with great  
22 care how you are to use proof beyond a  
23 reasonable doubt, the doubt that would  
24 concern you in the most important of your  
25 own personal affairs. Is buying a car



1           one of your most important affairs? Or  
2           is it not that? Is it buying a house?  
3           Buying a house. Think about that.  
4           Buying a house. If anybody came up to  
5           you in this case and tried to sell you a  
6           house, you would walk away from them  
7           absolutely stone-flat walk away from  
8           them. Don't do to Fred Hall what you  
9           wouldn't to somebody purchasing your own  
10          house.

11                 If this is so incredible, so  
12          confusing that you would not rely on it  
13          in the most important of your own  
14          affairs, buying a house, if you would  
15          turn around and walk away from it, then  
16          ladies and gentlemen, turn around and  
17          walk away from this case. Don't convict  
18          this man on this kind of evidence.

19                 Ladies and gentlemen, I'm proud to  
20          have the opportunity to talk to you. We  
21          are content to leave it in your hands.  
22          Thank you very much

23                 THE COURT: Mr. Anderson, you have  
24          18 minutes left, if you need it.

25                 MR. ANDERSON: Thank you, your

1 Honor.

2 There is an interesting thing that  
3 occurred throughout the course of this  
4 case, and that is this: We just heard  
5 Mr. Rader allude to the testimony of  
6 Jimmie Martin and Lolita Moore, and we  
7 all know that Jimmie Martin and Lolita  
8 Moore were never present in Court.  
9 Despite the effort of the State and  
10 despite the effort of Mr. Rader and Ms.  
11 Zucker, they couldn't be found. They  
12 didn't testify here. And the interesting  
13 thing about it is that the Court, upon my  
14 objection, could have prevented you from  
15 hearing anything about those people. I  
16 could have prevented Mr. Rader from  
17 getting into the descriptions that they  
18 gave, the number of occupants of the  
19 vehicle and everything else they said  
20 based on hearsay. I could have objected.  
21 The Judge could have sustained it, and  
22 you wouldn't have heard anything about  
23 it.

24 I didn't think that it was fair in  
25 this case. I didn't think that it was

1 reasonable, because Lolita Moore and  
2 Jimmie Martin were there. Jimmie Martin  
3 did give a license plate number. Lolita  
4 Moore did see the car drive by, but it  
5 wasn't fair for you not to hear it,  
6 although you didn't get chance to hear  
7 them testify. Because they didn't, you  
8 didn't get a chance to assess their  
9 credibility, because they were not here.

10 Let's talk about the problem with  
11 the identification by Johann Hart and  
12 Kevin Davis. There is no problem with  
13 the identification. If this defendant.  
14 Fredrick Hall, wasn't the gunman, how  
15 would those two individuals picked him  
16 out independent of each other? They  
17 wouldn't. They saw him. He was there  
18 with the gun.

19 what about the identification by  
20 officer Bailey? Was he wrong too? I  
21 haven't heard any dispute -- there's been  
22 no dispute by defense counsel that this  
23 car with this license plate number was  
24 used in the shooting. There is no  
25 dispute. Somebody has to be driving the

1 car. Somebody has to be behind the  
2 wheel.

3 Kevin Davis and Johann Hart said it  
4 was the defendant. Officer Bailey said  
5 he chased the defendant. In opening  
6 statement -- I wrote this down -- part of  
7 opening statements was the facts that are  
8 going to come out was that Dexter Hall  
9 came home and told his dad that the  
10 police were following him. Dexter Hall  
11 came into the house in a panic with the  
12 car keys and told his dad that the police  
13 were following him, and based on that  
14 information that's why Fredrick Hall went  
15 to the car on Windsor. But we know  
16 that's not true.

17 Look at the defense exhibits  
18 themselves. Look at the timeframe  
19 between when the police arrived on the  
20 scene at Fulton, which is where they were  
21 living. Eatrides and a few other  
22 officers were on the scene while the car  
23 chase was going on.

24 How was Dexter Hall, if he was  
25 involved in this -- and that's what the

1 defense is attempting to allude to, that  
2 somehow Dexter Hall and his buddies were  
3 the ones involved. How would Dexter Hall  
4 have gotten past Officer Bailey, and  
5 Officer Bailey makes bad identification?  
6 How would Dexter Hall get from that car,  
7 into his house and past the police? How  
8 would he have time to tell daddy and give  
9 him the keys, and then dad comes out the  
10 front door?

11 It wouldn't happen that way. The  
12 police were there when Dexter Hall was in  
13 the house and this defendant was found  
14 cowering behind the bushes, after having  
15 just abandoned the car. That was his  
16 opening. That was what his evidence was  
17 going to show.

18 Mr. Rader indicated that we were  
19 attempting to belittle the defendant's  
20 injuries. I am not belittling his  
21 injuries. He was shot with a gun -- if  
22 he was shot with a gun in his elbow, I  
23 don't know, but I know this, that no  
24 officer testified that he had a sling on  
25 that night. Nobody testified that the

1 defendant had a sling on at all that  
2 night. He certainly is capable of  
3 driving a car, because he told you that.

4 Let's take a look at these medical  
5 records. There is a document dated  
6 December 4, 1998, date of request  
7 12/2/98. This is a form filled out by  
8 the defendant to the hospital, to the  
9 Justice Center's personnel. It says I  
10 went to the hand doctor two weeks ago,  
11 the hand doctor ordered a few things for  
12 me, pain medication was one thing. So,  
13 he has been to the hand doctor. They  
14 ordered a few things for him. One of the  
15 things was pain medication. These  
16 reports look pretty thick.

17 when you look through the reports,  
18 I would say the majority of them contains  
19 some other conditions the defendant had,  
20 kidney stones. But then look at the  
21 December 4th entry from the defendant,  
22 pain medication along with other things  
23 that the doctor recommended. Then look  
24 at the one dated December 14, '98, and  
25 under treatment provided. I believe it's

1 a splint and a glove. December 14th is  
2 when those items were given to him for  
3 the treatment of this injury. There is  
4 no other evidence indicating that he  
5 received that sling beforehand or  
6 anything else. The first notation of  
7 that is on December 14th, 1998.

8 I'm not saying he was not shot.  
9 I'm not saying it might not have hurt.  
10 I'm saying he is wearing that sling in  
11 court to attempt to mislead you as to the  
12 severity of the injuries for you to  
13 believe that he was incapable of driving  
14 a car that night.

15 Let's talk about the refusal to  
16 sign the rights waiver. Mr. Rader says,  
17 why would anybody refuse to sign a rights  
18 waiver if had he wanted to give a  
19 voluntary statement.

20 It happens every day. The police  
21 give a defendant advice of his or her  
22 rights, and they say, I understand that,  
23 but I don't want to sign anything.

24 Do we see that anywhere else? Yes.  
25 Fredrick Hall's medical report, dated

1 10/23/98, they are trying to treat him  
2 for the medical injuries that he  
3 sustained. He refused the finger splint.  
4 He refused medical treatment.

5 How about the injury dated  
6 12/23/1998, refused --

7 MR. RADER: Objection, your Honor.

8 THE COURT: Overruled.

9 MR. ANDERSON: It's right there on  
10 this page, and you can look at them.  
11 Refused. Refusing medical treatment for  
12 these injuries that he apparently  
13 sustained. What is preventing him from  
14 refusing to sign a rights waiver?

15 Mr. Rader talks about inculpable  
16 statement, what he feels is the most  
17 inculpable statement that the defendant  
18 made, that he was out buying shaving  
19 cream. I would submit to you that is  
20 something that the defendant made up on  
21 the spot because he was caught cowering  
22 behind the bushes behind the car. He  
23 made it up, and he was going to stick  
24 with that story as long as he could.

25 Then Mr. Rader indicated there is a



1 cloud over his statement. There is no  
2 written statement in this case. The  
3 defendant did not give a written  
4 statement. Officer Huffman took notes of  
5 the statement. But you saw the defendant  
6 on the witness stand. I asked the  
7 defendant, "Tell the ladies and gentlemen  
8 of the jury what you told the police that  
9 night."

10 "I don't remember."

11 "Tell them what you told them."

12 "I don't remember."

13 "Well, did you tell them about the  
14 shaving cream?"

15 "Yes, I think I might have."

16 "Did you tell them about picking up  
17 some guy named Dave?"

18 "I might have said that, too, but I  
19 don't remember --"

20 He doesn't remember anything that  
21 he said. Either he does not remember, or  
22 he does remember it, and he doesn't want  
23 to tell you because it confirms  
24 everything that Officer Huffman indicated  
25 that he said in his statement.

1 Ladies and gentlemen, this car was  
2 used in the shooting. This defendant,  
3 Fredrick Hall, was operating the car.  
4 Dexter was at home. Officer Bailey saw  
5 him. Officer Bailey chased him. Officer  
6 Bailey identified him. Johann Hart  
7 identified him. Kevin Davis identified  
8 him.

9 Proof beyond a reasonable doubt.  
10 Can you say that you are firmly convinced  
11 of the truth of the charge? It's one of  
12 two ways. He driving the car or Dexter  
13 was driving the car with his friends.  
14 Dexter was at home. He was driving the  
15 car.

16 Carefully consider the evidence,  
17 carefully assess the credibility of the  
18 witnesses that you have heard from, and  
19 render a true and just verdict in this  
20 matter. A true and just verdict in this  
21 case is a verdict of guilty as charged  
22 against Fredrick Hall for the cold-  
23 blooded shooting of Johann Hart and Kevin  
24 Davis.

25 THE COURT: Thanks, Mr. Anderson.

1                   We are going to break until 12:25.  
2                   I'm going to read you the charge before  
3                   we break before lunch. The reason the  
4                   charge isn't finished is the printer is  
5                   not the newest. So, in any event, we'll  
6                   break until 12:25.

7                   Don't come to any conclusions based  
8                   upon anything that you have seen or heard  
9                   thus far. Don't discuss this case with  
10                  anyone else or allow anyone to discuss it  
11                  in your presence. We'll get you back in  
12                  here as soon as possible.

13                  (Whereupon, the jury left the  
14                  courtroom at 12:16 p.m.)

15                  THE COURT: All right. Any  
16                  objections from the State as to the jury  
17                  charge?

18                  MR. ANDERSON: No, your Honor. I  
19                  have not had a chance to look at the  
20                  revised edition, but assuming is it  
21                  incorporates the changes we discussed  
22                  yesterday, I have no objection

23                  THE COURT: Come on up. Both of  
24                  you look at this together.

25                  Any objections from the defendant

1 to the jury charge?

2 MR. RADER: No, your Honor.

3 THE COURT: Jury verdict forms, the  
4 forms are guilty/not guilty for each  
5 count, Counts 1 through 6, and stapled to  
6 that are forms for the specifications.  
7 what they do or don't do on the  
8 guilty/not guilty of the specifications,  
9 it says "circle one." There are  
10 instructions, "If you find the defendant  
11 guilty in Count 1, then please proceed to  
12 the specifications."

13 For the not guilty on Count 1, "If  
14 you find the defendant not guilty on  
15 Count 1, please proceed to Count 2."  
16 It's like that all the rest of way  
17 through.

18 Bring them in.

19 (Whereupon, the jury returned to  
20 the courtroom at 12:28 p.m.)

21 THE COURT: Ladies and gentlemen,  
22 I'm going to read you my instructions.  
23 They'll be with you back in the jury  
24 room, and having just told that you, I  
25 don't want you to just not listen. There

1 are little over 21 pages long, double  
2 spaced, and I will also go over the jury  
3 verdict forms that you'll have with you  
4 in the jury room.

5 Ladies and gentlemen of the jury,  
6 you have now heard all of the evidence in  
7 this case and the attorneys have just  
8 concluded their arguments.

9 It is the duty of the Court to  
10 charge you on the law; that is, to  
11 instruct you on the law which you must  
12 apply to the facts as you determine them  
13 to be in order to arrive at your verdict.  
14 You may have your own ideas as to what  
15 the law is or what it ought to be. You  
16 must put those out from your mind. It is  
17 your sworn duty to apply only the law as  
18 the Court gives it to you.

19 On the other hand, you are the  
20 exclusive judges of the facts. You  
21 determine what happened in this case. Do  
22 not infer from any ruling or statement  
23 that the Court has made during the course  
24 of the trial, or any facial expression,  
25 or anything else, that the Court has any

1 conclusion on any factual question.  
2 Factual questions are the sole province  
3 of the jury.

4 Evidence. Your conclusions about  
5 the facts will be based on what is called  
6 the evidence. You will recall that we  
7 started with opening statements by  
8 counsel in which they told you what they  
9 thought the evidence was going to be.  
10 Counsel have said various things or  
11 incorporated certain things into their  
12 questioning, and now they have concluded  
13 their final arguments.

14 All of this is a proper part of the  
15 trial, but none of it is evidence.

16 The evidence on which you will make  
17 your decisions is what you heard from the  
18 mouths of the witnesses sitting on the  
19 witness stand, plus the exhibits which  
20 have been admitted by the Court, plus  
21 agreed or stipulated facts.

22 Evidence may be direct or  
23 circumstantial or both. Direct evidence  
24 is the testimony by a witness who has  
25 seen or heard the facts to which he or

1 she testifies. It includes exhibits and  
2 all agreed or stipulated facts.

3 Evidence may also be used to prove  
4 a fact by inference. This is referred to  
5 as circumstantial evidence.

6 Circumstantial evidence is the proof of  
7 facts by direct evidence from which you  
8 may infer or derive by reasoning other  
9 reasonable facts or conclusions.

10 Where the evidence is both direct  
11 and circumstantial, the combination of  
12 the two must satisfy you of the  
13 defendant's guilt beyond a reasonable  
14 doubt.

15 Statements or answers that were  
16 stricken by the Court or which you were  
17 instructed to disregard are not evidence  
18 and must be treated as though you never  
19 heard them.

20 You must not speculate as to why  
21 the Court sustained the objection to any  
22 question or what the answer to such  
23 question might have been. You must not  
24 draw any inference or speculate on the  
25 truth or any suggestion included in a

1 question that was not answered.

2 The jury is also the exclusive  
3 judge of the credibility or believability  
4 of the witnesses and the weight to be  
5 given to the evidence. You may believe  
6 or disbelieve all or any part of the  
7 testimony of any witness.

8 In determining what part of a  
9 witness' testimony you wish to believe,  
10 you consider a number of facts:

11 The witness' appearance on the  
12 witness stand; their candor; what  
13 interest, if any, they may have in the  
14 outcome of this litigation; what  
15 relationship, if any, they have to anyone  
16 else involved in the case; the  
17 consistency or inconsistency of one thing  
18 they said with something else you believe  
19 to be true or untrue; whether they were  
20 in a position to know that concerning  
21 which they testified; and all the facts  
22 and circumstances surrounding the  
23 testimony.

24 In brief, you will use all of those  
25 tests which you use in your ordinary



1           everyday life in order to determine what  
2           testimony is worthy of belief and what  
3           testimony is not worthy of belief.

4           Evidence was received that the  
5           defendant was convicted of prior felony  
6           offenses. That evidence was received  
7           only for a limited purpose.

8           It was not received, and you may  
9           not consider it, to prove the character  
10          of the defendant in order to show he  
11          acted in accordance with that character.

12          If you find that the defendant was  
13          convicted of prior felony offenses, you  
14          may consider that evidence only for the  
15          purpose of testing the defendant's  
16          credibility and the weight of the  
17          evidence to be given the defendant's  
18          testimony. It cannot be considered for  
19          any other purpose.

20          All criminal cases start with an  
21          indictment, but the indictment has  
22          absolutely nothing whatsoever to do with  
23          the guilt or innocence of this defendant.  
24          It simply advised the defendant exactly  
25          what the offense is with which he is

1 charged and sets out exactly what the  
2 State of Ohio must prove to you beyond a  
3 reasonable doubt before you can return a  
4 verdict of guilty.

5 The defendant is presumed innocent  
6 unless and until the jury has determined  
7 that his guilt has been proved beyond a  
8 reasonable doubt. There is no necessity  
9 or requirement that the defendant present  
10 any evidence.

11 The burden of proof rests entirely  
12 on the State of Ohio. The defendant must  
13 be acquitted unless the State produces  
14 evidence which convinces you beyond a  
15 reasonable doubt of every essential  
16 element of the crime charged in the  
17 indictment.

18 You have evidence before you that  
19 the defendant refused to sign a written  
20 rights waiver. A signed written rights  
21 waiver is not necessary for statements to  
22 be lawfully obtained. A defendant can  
23 refuse to sign a rights waiver, but if  
24 the defendant is explained or knows his  
25 rights, understands them, and voluntarily

1 makes statements, those statements are,  
2 in fact, properly obtained and are part  
3 of the evidence in this case.

4 Reasonable doubt. Reasonable doubt  
5 is defined by the Ohio legislature as  
6 follows:

7 Reasonable doubt is present when  
8 the jurors, after they have carefully  
9 considered and compared all the evidence,  
10 cannot say they are firmly convinced of  
11 the truth of the charge. It is a doubt  
12 based on reason and common sense.

13 Reasonable doubt is not mere  
14 possible doubt, because everything  
15 relating to human affairs or depending on  
16 moral evidence is open to some possible  
17 or imaginary doubt.

18 Proof beyond a reasonable doubt is  
19 proof of such character that an ordinary  
20 person would be willing to rely and act  
21 upon it in the most important of his own  
22 affairs.

23 Meaning of words. Remember that  
24 words in the English language, whether  
25 used in this charge or in the evidence

1       you are to weigh, are to be given their  
2       normal and customary meaning in the  
3       English language unless you are  
4       specifically instructed to give them some  
5       specialized or different meaning in this  
6       charge. This instruction on  
7       interpretation should govern you  
8       throughout your deliberations.

9               Count 1, felonious assault, Section  
10       2903.11(A)(2), with specifications. The  
11       defendant is charged with felonious  
12       assault. Before you can find the  
13       defendant guilty of felonious assault,  
14       you must find beyond a reasonable doubt  
15       that on or about the 17th day of October,  
16       1998, and in Hamilton County, Ohio, the  
17       defendant knowingly caused or attempted  
18       to cause physical harm to Kevin Davis by  
19       means of a deadly weapon or dangerous  
20       ordinance.

21               Knowingly. A person acts  
22       knowingly, regardless of his purpose,  
23       when he is aware that his conduct will  
24       probable cause a certain result. A  
25       person has knowledge of circumstances

1 when he is aware that such circumstances  
2 probably exist.

3 knowingly means that person is  
4 aware of the existence of the facts and  
5 that his acts will probable cause a  
6 certain result.

7 Since you cannot look into the mind  
8 of another, knowledge is determined from  
9 all the facts and circumstances in  
10 evidence. You will determine from these  
11 facts and circumstances whether there  
12 existed at the time in the mind of the  
13 defendant an awareness of the probability  
14 that he was committing felonious assault.

15 Causation. The State charges that  
16 the act of the defendant caused physical  
17 harm to Kevin Davis. Cause is an  
18 essential element of the offense. Cause  
19 is an act or failure to act which in a  
20 natural and continuous sequence directly  
21 produces the physical harm to Kevin  
22 Davis, and without which it would not  
23 have occurred.

24 Physical harm. Physical harm to  
25 persons means any injury, illness, or

1 other physiological impairment,  
2 regardless of its gravity or duration.

3 Deadly weapon. Deadly weapon means  
4 any instrument, device or thing cable of  
5 inflicting death, and designed or  
6 specially adapted for use as a weapon, or  
7 possessed, carried or used as a weapon.

8 Capability of deadly weapon. A  
9 deadly weapon is any instrument, device  
10 or thing which has two characteristics.

11 The first characteristic is that it  
12 is capable of inflicting or causing  
13 death.

14 The second characteristic is in the  
15 alternative, either the instrument,  
16 device or thing was designed or specially  
17 adapted for use as a weapon, such as a  
18 gun, knife, billy club or brass knuckles,  
19 or it was possessed, carried or used in  
20 this case as a well. These are questions  
21 of fact for you to determine.

22 Attempt. A criminal attempt is  
23 when one purposely does or fails to do  
24 anything which is an act or omission  
25 constituting a substantial step in a

1 course of conduct planned to culminate in  
2 his commission of the crime. To  
3 constitute a substantial step, the  
4 conduct must be strongly corroborative of  
5 the actor's criminal purpose.

6 Preparing, planning, or arraigning  
7 the means for the commission of the crime  
8 does not constitute an attempt.

9 It is not a defense to a charge of  
10 attempt that, in retrospect, the  
11 commission of the for instance, which was  
12 the object of the attempt, was impossible  
13 under the circumstances.

14 If you find that the State proved  
15 beyond a reasonable doubt all the  
16 essential elements of the offense of  
17 felonious assault, your verdict must be  
18 guilty of that offense in Count 1.

19 If you find that the State failed  
20 to prove beyond a reasonable doubt any  
21 one of the essential elements of the  
22 offense of felonious assault, your  
23 verdict must be not guilty of that  
24 offense in Count 1.

25 Specification to Count 1. If your

1 verdict is guilty, you will separately.  
2 decide whether the defendant had a  
3 firearm on or about his person or under  
4 his control while committing the offense  
5 of felonious assault.

6 Specification 2 to Count 1. If you  
7 find the defendant guilty of felonious  
8 assault, you will also separately  
9 determine if the defendant did have on or  
10 about his person or under his control, a  
11 firearm while committing the offense of  
12 felonious assault and displayed the  
13 firearm, brandished the firearm,  
14 indicated that he possessed a firearm or  
15 used it to facilitate the offense as  
16 alleged in Count 1 hereof.

17 Specification 3 to Count 1. If you  
18 find the defendant guilty of felonious  
19 assault in Count 1, you will also  
20 separately decide whether the defendant  
21 committed the offense of felonious  
22 assault, a felony that included as an  
23 essential element, purposely or knowingly  
24 causing or attempting to cause death or  
25 physical harm to another by discharging a



1 firearm from a motor vehicle, other than  
2 a manufactured home.

3 Firearm. Firearm means any deadly  
4 weapon capable of expelling or propelling  
5 one or more projectiles by the action of  
6 an explosive or combustible propellant.  
7 Firearm includes an unloaded firearm and  
8 any firearm which is inoperable, but  
9 which can be readily rendered operable.

10 When deciding whether a firearm is  
11 capable of expelling or propelling one or  
12 more projectiles by the action of an  
13 explosive or combustible propellant, you  
14 may rely on circumstantial evidence,  
15 including but not limited to the actions  
16 of the individual exercising control over  
17 the firearm.

18 The definition of firearm applies  
19 to all specifications in Counts 1, 2, 3,  
20 4, 5, and 6.

21 Count 2, felonious assault, Section  
22 2903.11(A)(1) with specifications. the  
23 defendant is charged with felonious  
24 assault. Before you can find the  
25 defendant guilty of felonious assault,

1           you must find beyond a reasonable doubt  
2           that on or about the 17th day of October,  
3           1998, and in Hamilton County, Ohio, the  
4           defendant knowingly caused serious  
5           physical harm to Kevin Davis.

6                     knowingly. This has been  
7           previously defined.

8                     Causation. This has been  
9           previously defined, with the exception  
10          that the words physical harm should be  
11          replaced with serious physical harm.

12                    Serious physical harm. Serious  
13          physical harm to persons means any of the  
14          following.

15                    One, any mental illness or  
16          condition of such gravity as would  
17          normally require hospitalization or  
18          prolonged psychiatric treatment.

19                    Two, any physical harm which  
20          carries a substantial risk of death.

21                    Three, any physical harm which  
22          involves some permanent incapacity,  
23          whether partial or total, or which  
24          involves some temporary, substantial  
25          incapacity.

1 Four, any physical harm which  
2 involves some permanent disfigurement, or  
3 which involves some temporary, serious  
4 disfigurement.

5 Five, any physical harm which  
6 involves acute pain of such duration as  
7 to result in substantial suffering, or  
8 which involves any degree of prolonged  
9 intractable pain.

10 Specification 1 to Count 2. If  
11 your verdict is guilty in Count 2, you  
12 will separately decide whether the  
13 defendant had a firearm on or about his  
14 person or under his control while  
15 committing the offense of felonious  
16 assault.

17 Specification 2 to Count 2. If you  
18 find the defendant guilty of felonious  
19 assault, you will also separately  
20 determine if the defendant did have on or  
21 about his person or under his control, a  
22 firearm while committing the offense of  
23 felonious assault and displayed the  
24 firearm, brandished the firearm,  
25 indicated that he possessed a firearm or

1           used it to facilitate the offense as  
2           alleged in Count 2 hereof.

3                       Specification 3 to Count 2.

4           If you find the defendant guilty of  
5           felonious assault in Count 2, you will  
6           also separately decide whether the  
7           defendant committed the offense of  
8           felonious assault, a felony that included  
9           as an essential element, purposely or  
10          knowingly causing or attempting to cause  
11          death or physical harm to another by  
12          discharging a firearm from a motor  
13          vehicle, other than a manufactured home.

14                      Firearm. This has been previously  
15          defined.

16                      Count 3, felonious assault, Section  
17          290311(A)(2) with specifications. The  
18          defendant is charged with felonious  
19          assault. Before you can find the  
20          defendant guilty of felonious assault,  
21          you must find beyond a reasonable doubt  
22          that on or about the 17th day of October,  
23          1998, and in Hamilton County, Ohio, the  
24          defendant knowingly caused or attempted  
25          to cause physical harm to Johann Hart by

1 means of a deadly weapon.

2 knowingly, this has been previously  
3 defined.

4 Causation, this has been previously  
5 defined.

6 Physical harm, this has been  
7 previously defined.

8 Deadly weapon, this has been  
9 previously defined.

10 Capability of deadly weapon, this  
11 has been previously defined.

12 Attempt, this has been previously  
13 defined.

14 Specification 1 to Count 3. If  
15 your verdict is guilty, you will  
16 separately decide whether the defendant  
17 had a firearm on or about his person or  
18 under his control while committing the  
19 offense of felonious assault.

20 Specification 2 to Count 3. If you  
21 find the defendant guilty of felonious  
22 assault, you will also separately  
23 determine if the defendant did have on or  
24 about his person or under his control, a  
25 firearm while committing the offense of

1           felonious assault and displayed the  
2           firearm, brandished the firearm,  
3           indicated that he possessed a firearm or  
4           used it to facilitate the offense as  
5           alleged in Count 3 hereof.

6                       Specification 3 to Count 3. If you  
7           find the defendant guilty of felonious  
8           assault in Count 3, you will also  
9           separately decide whether the defendant  
10          committed the offense of felonious  
11          assault, a felony that included as an  
12          essential element, purposely or knowingly  
13          causing or attempting to cause death or  
14          physical harm to another, by discharging  
15          a firearm from a motor vehicle other than  
16          a manufactured home.

17                      Firearm, this has been previously  
18          defined.

19                      Count 4, felonious assault, Section  
20          2903.11(A)(1) with specifications. The  
21          defendant is charged with felonious  
22          assault. Before you can find the  
23          defendant guilty of felonious assault,  
24          you must find beyond a reasonable doubt  
25          that on or about the 17th day of October,

1 1998, and in Hamilton County, Ohio, the  
2 defendant knowingly caused serious  
3 physical harm to Johann Hart.

4 Knowingly, this has been previously  
5 defined.

6 Causation, this has been previously  
7 defined, with the exception that the  
8 words physical harm should be replaced  
9 with serious physical harm.

10 Serious physical harm, this has  
11 been previously defined.

12 Specification 1 to Count 4. If  
13 your verdict is guilty in Count 4, you  
14 will separately decide whether the  
15 defendant had a firearm on or about his  
16 person or under his control while  
17 committing the offense of felonious  
18 assault.

19 Specification 2 to Count 4. If you  
20 find the defendant guilty of felonious  
21 assault, you will also separately  
22 determine if the defendant did have on or  
23 about his person or under his control, a  
24 firearm while committing the offense of  
25 felonious assault and displayed the

1 firearm, brandished the firearm,  
2 indicated that he possessed a firearm or  
3 used it to facilitate the offense as  
4 alleged in Count 4 hereof.

5 Specification 3 to Count 4. If you  
6 find the defendant guilty of felonious  
7 assault in Count 4, you will also  
8 separately decide whether the defendant  
9 committed the offense of felonious  
10 assault, a felony that included as an  
11 essential element, purposely or knowingly  
12 causing or attempting to cause death or  
13 physical harm to another, by discharging  
14 a firearm from a motor vehicle, other  
15 than a manufactured home.

16 Firearm, this has been previously  
17 defined.

18 Count 5, attempt, murder, Section  
19 2923.02(A) with specifications. The  
20 defendant is charged with the attempted  
21 murder of Kevin Davis. Before you can  
22 find the defendant guilty of attempted  
23 murder, you must find beyond a reasonable  
24 doubt that on or about the 17th day of  
25 October, 1998, and in Hamilton County,



1 Ohio, the defendant knowingly engaged in  
2 conduct which, if successful, would have  
3 constituted or resulted in the offense of  
4 the murder of Kevin Davis.

5 knowingly, this has been previously  
6 defined.

7 Attempt, this has been previously  
8 defined.

9 Murder. Murder is defined as  
10 purposely causing the death of another.  
11 Purpose to cause the death of another is  
12 an essential element of the crime of  
13 attempted murder.

14 A person acts purposely when it is  
15 his specific intention to cause a certain  
16 result. It must be established in this  
17 case that at the time in question there  
18 was present in the mind of the defendant  
19 a specific intention to commit attempted  
20 murder.

21 Purpose is a decision of the mind  
22 to do an act with a conscious objective  
23 of producing a single result or engaging  
24 in specific conduct. To do an act  
25 purposely is to do it intentionally and

1 not accidentally.

2 Purpose and intent mean the same  
3 thing. The purpose with which a person  
4 does an act is known only to himself,  
5 unless he expresses it to others or  
6 indicates it by his conduct.

7 The burden of proof with which a  
8 person does an act is determined from the  
9 manner in which it is done, the means  
10 used and all the other facts and  
11 circumstances in evidence.

12 If you find is that the State  
13 proved beyond a reasonable doubt all the  
14 essential elements of the offense of  
15 attempted murder, your verdict must be  
16 guilty of that offense in Count 5.

17 If you find that the State failed  
18 to prove beyond a reasonable doubt any  
19 one of the essential elements of the  
20 offense of attempted murder, your verdict  
21 must be not guilty of that offense i9n  
22 Count 5.

23 Specification 1 to Count 5. If  
24 your verdict is guilty in Count 5, you  
25 will separately decide whether the

1 defendant had a firearm on or about his  
2 person or under his control while  
3 committing the offense of attempted  
4 murder.

5 Specification 2 to Count 5. If you  
6 find the defendant guilty of attempted  
7 murder, you will also separately  
8 determine if the defendant did have on or  
9 about his person or under his control, a  
10 firearm while committing the offense of  
11 attempted murder and displayed the  
12 firearm, brandished the firearm,  
13 indicated that he possessed a firearm or  
14 used it to facilitate the offense as  
15 alleged in Count 5 hereof.

16 Specification 3 to count 5. If you  
17 find the defendant guilty of attempted  
18 murder in Count 5, you will also  
19 separately decide whether the defendant  
20 committed the offense of attempted  
21 murder, a felony that included as an  
22 essential element, purposely or knowingly  
23 causing or attempting to cause death or  
24 physical harm to another, by discharging  
25 a firearm from a motor vehicle, other

1           than a manufactured home.

2           Firearm, this has been previously  
3 defined.

4           Count 6, attempt, murder, Section  
5 2923.02(A), with specifications. The  
6 defendant is charged with the attempted  
7 murder of Johann Hart. Before you can  
8 find the defendant guilty of attempted  
9 murder, you must find beyond a reasonable  
10 doubt that on or about the 17th day of  
11 October, 1998, and in Hamilton County,  
12 Ohio, the defendant knowingly engaged in  
13 conduct which, if successful, would have  
14 constituted or resulted in the offense of  
15 the murder of Johann Hart.

16           Knowingly, this has been previously  
17 defined.

18           Attempt, this has been previously  
19 defined.

20           Murder, this has been previously  
21 defined.

22           If you find that the State proved  
23 beyond a reasonable doubt all the  
24 essential elements of the offense of  
25 attempted murder, your verdict must be

1 guilty of that offense in Count 6.

2 If you find that the State failed  
3 to prove beyond a reasonable doubt any  
4 one of the essential elements of the  
5 offense of attempted murder, your verdict  
6 must be not guilty of that offense in  
7 Count 6.

8 Specification 1 to Count 6. If  
9 your verdict is guilty in Count 6, you  
10 will separately decide whether the  
11 defendant had a firearm on or about his  
12 person or under his control while  
13 committing the offense of attempted  
14 murder.

15 Specification 2 to Count 6. If you  
16 find the defendant guilty of attempted  
17 murder, you will also separately  
18 determine if the defendant did have on or  
19 about his person or under his control, a  
20 firearm while committing the offense of  
21 attempted murder and displayed the  
22 firearm, brandished the firearm,  
23 indicated that he possessed a firearm or  
24 used it to facilitate the offense as  
25 alleged in Count 6 hereof.

1                   Specification 3 to Count 6. If you  
2                   find the defendant guilty of attempted  
3                   murder in Count 6, you will also  
4                   separately decide whether the defendant  
5                   committed the offense of attempted  
6                   murder, a felony that included as an  
7                   essential element, purposely or knowingly  
8                   causing or attempting to cause death or  
9                   physical harm to another by discharging a  
10                  firearm from a motor vehicle, other than  
11                  a manufactured home.

12                  Firearm, this has been previously  
13                  defined.

14                  Count 7, failure to comply with an  
15                  order or signal of police officer,  
16                  Section 2921.331(B).

17                  The defendant is charged with  
18                  failing to comply with an order or signal  
19                  of a police officer. Before you can find  
20                  the defendant guilty, you must find  
21                  beyond a reasonable doubt that on or  
22                  about the 17th day of October, 1998, and  
23                  in Hamilton County, Ohio, the defendant  
24                  operated a motor vehicle so as willfully  
25                  to elude or flee a police officer after

1 receiving a visible or audible signal  
2 from a police officer to bring his motor  
3 vehicle to a stop.

4 Failure to comply. Failed to  
5 comply means ignored or disobeyed.

6 Police officer. Police officer  
7 means every officer authorized to direct  
8 or regulate traffic or to make arrests  
9 for violations of traffic regulations.

10 willfully. A person acts willfully  
11 when it is his specific intention to  
12 cause a certain result or that he  
13 intentionally failed to do that which  
14 should be done. It must be established  
15 in this case that at the time in  
16 question, there was present in the mind  
17 of the defendant a specific intention to  
18 flee or elude a police officer.

19 Elude. Elude means to get away  
20 from.

21 visible. Visible means capable of  
22 being seen.

23 Audible. Audible means capable of  
24 being heard.

25 Multiple counts. If you find that